

## Part III - Administrative, Procedural, and Miscellaneous

### Extension of Temporary Rules Allowing Governmental Issuers to Purchase and Hold Their Own Tax-Exempt Bonds

Notice 2010-7

#### **SECTION 1. PURPOSE**

This Notice modifies Notice 2008-88, 2008-42 I.R.B. 933 (October 20, 2008) to extend the expiration dates from December 31, 2009 to December 31, 2010 of certain temporary rules allowing state and local governmental issuers to purchase and hold their own tax-exempt bonds under special reissuance standards for tax-exempt bonds. The intent of the extensions of these temporary rules is to facilitate liquidity and stability in the tax-exempt bond market in recognition of some continuing credit enhancement and liquidity constraints in this market.

Notice 2008-88 amended and supplemented Notice 2008-41, 2008-15 I.R.B. 742 (April 14, 2008), regarding reissuance standards for tax-exempt bonds to expand the circumstances and time periods during which the Treasury Department and the Internal Revenue Service ("IRS") would treat a tax-exempt bond that is purchased by its state or local governmental issuer as continuing in effect without resulting in a reissuance or

retirement of the purchased bond solely for purposes of § 103 and §§ 141 through 150 of the Internal Revenue Code, as amended (“Code”). (Except as noted, section references in this Notice are to the Code and the Income Tax Regulations). Defined terms in Notice 2008-41 and Notice 2008-88 shall have the same meanings when used in this Notice.

## **SECTION 2. BACKGROUND**

A debt instrument generally is treated as retired or extinguished when an issuer acquires its own debt because a merger of the interests of the issuer and the holder occurs. Notice 2008-41 provides that under certain rules for qualified tender bonds, a bond purchased by or on behalf of a governmental issuer pursuant to a qualified tender right is not retired until the end of the 90-day period from and after the date of such purchase. In response to liquidity constraints in the tax exempt bond market, § 3.2(3)(b) of Notice 2008-41 extended the 90-day period to 180-days for any purchase by or on behalf of a governmental issuer pursuant to a qualified tender right as long as such purchase occurred before October 1, 2008.

In response to auction failures in the auction rate bond sector of the tax-exempt bond market, Notice 2008-41 provided other temporary rules. Section 4 of Notice 2008-41 allowed governmental issuers to purchase their own tax-exempt auction rate bonds on a temporary basis without resulting in a reissuance or retirement of the purchased tax-exempt bonds solely for purposes of § 103 and §§ 141 to 150 if the governmental issuer purchased the tax-exempt auction rate bonds before October 1, 2008, and held

those bonds for not more than a 180-day period from the date of purchase. Section 6.2 of Notice 2008-41 allowed temporary waivers of interest rate caps on auction rate bonds to be disregarded in determining whether there was a significant modification of such bonds under § 1.1001-3(e)(2) if the agreement to waive such a cap and the period during which such waiver was in effect both were within the period between November 1, 2007 and October 1, 2008.

In light of the then-continuing liquidity constraints in the tax-exempt bond market, Notice 2008-88 expanded the types of bonds eligible for relief under Notice 2008-41 and extended the time period for such relief provisions to apply. Section 3.1 of Notice 2008-88 provided that tax-exempt qualified tender bonds and tax-exempt commercial paper purchased by a governmental issuer would continue in effect without resulting in a reissuance or retirement of such bonds if, irrespective of when the governmental issuer purchased such bonds, the governmental issuer held the bonds until not later than December 31 2009. In addition, § 3.1 of Notice 2008-88 clarified that, in the case of the purchase of any particular obligation of tax-exempt commercial paper, including a purchase at maturity, a refinancing of that purchased tax-exempt commercial paper during the permitted holding period would be treated as part of the same issue as that of the purchased tax-exempt commercial paper.

Section 3.2 of Notice 2008-88 extended the application of the special 180-day holding period (in lieu of the general 90-day holding period) for qualified tender bonds to those qualified tender bonds purchased pursuant to qualified tender rights until

December 31, 2009. In addition, § 3.2 of Notice 2008-88 extended the application of § 6.2 of Notice 2008-41 to disregard certain waivers of interest rate caps on tax-exempt auction rate bonds until December 31, 2009.

## **SECTION 3. INTERIM GUIDANCE AND RELIANCE**

### **3.1 In General**

Pending the promulgation and effective date of future administrative or regulatory guidance, taxpayers may rely on the interim guidance provided in this Notice.

### **3.2 Extension of Certain Temporary Rules**

Section 3.1 of Notice 2008-88 regarding purchases by a governmental issuer of qualified tender bonds or tax-exempt commercial paper is amended to extend the final date for a governmental issuer to purchase or hold such tax-exempt bonds without resulting in a reissuance or retirement of the purchased bonds until December 31, 2010. In addition, refinancing of purchased tax-exempt commercial paper during this extended period will continue to be treated as part of the same issue as the purchased tax-exempt commercial paper.

The provision of § 3.2 of Notice 2008-88 that extended § 3.2(3)(b) of Notice 2008-41 regarding the purchase of bonds pursuant to qualified tender rights for which the special 180-day holding period applies is amended to extend the final date for such purchases to December 31, 2010.

The provision of § 3.2 of Notice 2008-88 that extended § 6.2 of Notice 2008-41

regarding the treatment of certain waivers of interest rate caps on tax-exempt auction rate bonds is amended to extend the final date on which covered waivers are disregarded to December 31, 2010.

#### **SECTION 4. EFFECT ON OTHER DOCUMENTS**

This Notice modifies Notice 2008-88 and Notice 2008-41.

#### **SECTION 5. EFFECTIVE DATE**

This Notice is effective as of March 25, 2008, which is the effective date of Notice 2008-88 and Notice 2008-41. Issuers of tax-exempt bonds may apply and rely on this Notice to the same extent and in the same manner as provided in § 8 of Notice 2008-41.

#### **SECTION 6. DRAFTING INFORMATION**

The principal author of this Notice is Aviva M. Roth, Office of the Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this Notice, contact Aviva M. Roth at (202) 622-3980 (not a toll-free call).